IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1180/2002 M/S

Man Singh …… Petitioner

Versus

District Judge, Uttarkashi and other ……Respondents

Hon'ble Irshad Hussain, J.

Heard Sri B.P.S.Mer holding brief of Sri V.B.S.Negi learned counsel for the petitioner and Sri S.K.Jain learned counsel for the respondent no.2.

By means of this writ petition, the petitioner has challenged the propriety of the impugned order dated 24.7.2002 (Annexure-1) passed by the Civil Judge (S.D.) Uttarkashi and order dated 7.9.2002 (Annexure-4) passed by the District Judge, Uttarkashi in his revisional jurisdiction.

Original suit no.27/1992 was filed by the respondent no.2 for permanent injunction against the petitioner and others for restraining them from enterfering in his possession over plot no. 405, 406, 532, 1357 and 367. The original suit was decreed on the premises that the said plaintiff is the owner in possession of these plots. The finding of fact was concluded by the judgment of the Allahabad High Court in second appeal no. 877/2000 (Annexure-4 to the counter affidavit). These facts are not in dispute. Subsequently, the petitioner was alleged to have dispossessed the said plaintiff-respondent no.2 from the plot no.532 whereupon an application under order 21 Rule 32 of the Code of Civil Procedure was moved to punish the wrongdoer-petitioner. By the impugned order dated 24.7.2002 the learned Civil Judge (S.D.), Uttarkashi rejected the objections filed by the said petitioner under Section 47 and order of attachment of his property under order 21 Rule 32(1) C.P.C. was directed. Against the judgment debtor the petitioner preferred a revision before the District Judge which was dismissed by the impugned order dated 7.9.2002 referred above. The petitioner-judgment-debtor raised a plea that the plaintiff respondent no.2 had never been in possession on plot no. 532. The learned trail court took cognizance of the fact that the finding of the fact had been affirmed by the Allahabad High Court and there was no material on record to

indicate that the respondent no.2 was not in possession of the said plot when the decree was finally affirmed in second appeal. The petitioner-judgment debtor had forcibly dispossessed the respondent no.2 from the said plot and therefore the aggrieved party had no alternative but no move the application which had been rightly allowed by the learned Civil Judge and his order dated 24.7.2002 had been rightly affirmed by the District Judge as mentioned above.

Under these circumstances and the facts of the case, challenge to these orders by means of this petition is misconceived. The petition is, therefore, liable to be dismissed. The petition is dismissed. No order as to costs.

Dated 12.3.2004 **(Irshad Hussain, J.)**

Rawat